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essence, whether brought at law or in equity, the only distinction being that in case the rights of the parties are not complicated and are easy of adjustment the relief may be had by motion on the law side of the court, whereas if the rights are involved and difficult of settlement a separate bill in equity is resorted to.¹⁷

It is to be noted, however, that viewed from a practical standpoint the result of the decision seems more doubtful. It must necessarily lead to circuity of action, for the defendant having paid the plaintiff's judgment may immediately levy execution on the funds and apply \$11,000 thereof in satisfaction of his own judgment, thus in effect accomplishing a setoff.

It may well be that the peculiar situation here presented should authorize an exception to the general rule which prevents an outlawed judgment being used as the basis of a setoff. But this could be allowed only in cases where the rights of third parties would not be prejudiced, and since in any case where the rights of third parties do not intervene the defendant can, in effect, accomplish a setoff by the means suggested above, no substantial injustice results, and the decision may, therefore be upheld as a harmless sacrifice of expediency to preserve the continuity of the law.¹⁸

L. A. C.

RESTRAINT OF TRADE: CLAYTON ACT—Section three of the Clayton Act¹ prohibits contracts of sale, or leases made upon the condition, agreement or understanding that the purchaser or lessee shall not deal in nor use the goods of a competitor of the seller or lessor where the effect of such sale or lease “. . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce.” The first important complaint under the Clayton Act was filed in October, 1915, at St. Louis, against the

¹⁷ Supra, n. 9.

¹⁸ As opposed to the decision in the instant case it may be said that: (1) the wording of 685 (“a judgment may be enforced or carried into execution”) is broad enough to allow of a setoff; (2) the language of the Supreme Court in *Saunders v. Simms*, supra, n. 15, seems to approve of a broad interpretation of this section; (3) a motion to offset a judgment is not in the nature of an action thereon but is merely one means of enforcing the judgment; (4) the essential requisite which must be present in a judgment in order that it be the basis of a setoff is that it be enforceable by execution; (5) the Supreme Court has quoted with approval the rule, as stated in *Waterman on Setoff*, § 339, that “ordinarily, judgments may be set off whenever the executions issued thereon could be set off one against the other by the officer who may have them in his hands for service.” *Haskins v. Jordan*, supra, n. 6

¹ Act of October 15, 1914, c. 323, 38 U. S. Stat. at L. 730, 731, U. S. Comp. Stat. (1918) §8835c, Barnes' Fed. Code (1919) §7960, 9 Fed. Stat. Ann. (2d ed.) 733. The Clayton Act also makes it unlawful to discriminate in prices for the purpose of injuring or destroying the business of competitors. Labor and agricultural organizations are exempted from the operation of the Anti-Trust laws.

United Shoe Machinery Corporation.² The leases made by the defendants forbade the use of machines purchased from other manufacturers, under penalty of having the leases cancelled and the machines retaken by the defendants. Some indispensable machines, such as the stitch indenter and burnisher, could be obtained only from the defendants. The Shoe Corporation, however, had valid patents as to the machines and was not shown to have acted oppressively. Did the leases come within the third section of the Clayton Act because their effect "may be to substantially lessen competition and tend to create a monopoly"? In *United Shoe Machinery Corporation v. United States*,³ the court held that "While the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use. We can entertain no doubt that such provisions as were enjoined are embraced in the broad terms of the Clayton Act which cover all conditions, agreements or understandings of this nature."

In the principal case, as in *Standard Fashion Company v. Magrane-Houston Company*⁴ decided a few days earlier, the Supreme Court followed the plain tendency of the lower federal courts⁵ to regard section three of the Clayton Act as having an effect designedly beyond that of the Sherman Act.⁶ That contracts or leases might substantially lessen competition was not sufficient to make them unlawful under the Sherman Act if not unduly enforced to enhance prices and to keep out competition.⁷ The Clayton Act seeks to "reach the agreements embraced within its sphere in their incipency."⁸ It may thus be distinguished from the other Anti-Trust Acts. Summarized briefly, the Sherman Act prohibits undue restraint of trade by contract or conspiracy, the Federal Trade Commission Act condemns unfair methods of competition even though they may not come within the direct inhibition of

² *United States v. United Shoe Machinery Co.* (1916) 234 Fed. 127; affirmed in 264 Fed. 138; affirmed in principal case, *infra*, n. 3.

³ (April 17, 1922) 42 Sup. Ct. Rep. 363, 365, U. S. Adv. Ops. 1922, p. 420.

⁴ (April 10, 1922) 42 Sup. Ct. Rep. 360, U. S. Adv. Ops. 1922, p. 397. "The covenant, read in the light of the circumstances in which it was made, is one by which the purchaser agreed not to sell any other make of patterns while the contract was in force."

⁵ *United States v. United Shoe Machinery Co.*, *supra*, n. 2; in the case of *Motion Picture Patents Co. v. Universal Film Manufacturing Co.* (1916) 235 Fed. 398, the circuit court held that the contract there considered was prohibited by section 3 of the Clayton Act, but the case was decided upon other grounds when it reached the Supreme Court, *infra*, n. 13; *Standard Fashion Co. v. Magrane-Houston Co.* (1919) 259 Fed. 793; affirmed, *supra*, n. 4.

⁶ Act of July 2, 1890, c. 647, 26 U. S. Stat. at L. 114, U. S. Comp. Stat. (1918) §8820, Barnes' Fed. Code (1919) §7944, 9 Fed. Stat. Ann. (2d ed.) 644.

⁷ 10 California Law Review, 350, and cases there cited. See particularly *United States v. United Shoe Machinery Co.* (1917) 247 U. S. 32, 62 L. Ed. 968, 38 Sup. Ct. Rep. 473.

⁸ *Supra*, n. 4, p. 362.

the Sherman Act,⁹ and the Clayton Act is aimed against all understandings which may tend substantially to restrain trade.

The Anti-Trust Laws restrict monopolies, but patent and copyright laws create them.¹⁰ How is each group of statutes to be construed with reference to the other? The Clayton Act specifically applies to goods, and so on, whether "patented or unpatented."¹¹ This provision was inserted designedly,¹² probably as a result of the Dick Case.¹³ It appears, however, that it was unnecessary.¹⁴ The Dick Case has now been definitely overruled.¹⁵ A patentee receives "no more than the exclusive right to make, use and sell the invention" and "the rights secured by a patent do not protect the making of contracts in restraint of trade."¹⁶

The Colgate Case,¹⁷ the American Column and Lumber Company Case,¹⁸ the Beech-Nut Case,¹⁹ and now the Standard Fashion Company²⁰ and the United Shoe Machinery Corporation²¹ Cases clearly show that the Supreme Court has approached the construction of the Anti-Trust Laws in a spirit which makes this legislation, as it was intended, a powerful preventive against monopoly. The principal difficulty, however, lies in the fact that business men are generally inclined to regard many of the prohibited methods as entirely justifiable and will probably work out new and more effective schemes to avoid the inhibitions of the statutes.²²

C. C. H.

⁹ 10 California Law Review, 229, and citations.

¹⁰ For clear discussion of this, see 28 Harvard Law Review 394.

¹¹ *Supra*, n. 1.

¹² *Supra*, n. 3, p. 366.

¹³ *Infra*, n. 15.

¹⁴ *Supra*, n. 3, p. 367.

¹⁵ Motion Picture Patents Co. v. Universal Film Manufacturing Co. (1917) 243 U. S. 502, 61 L. Ed. 871, 37 Sup. Ct. Rep. 416, L. R. A. 1917E 1187, Ann. Cas. 1918A 959, overruling Henry v. Dick Co. (1913) 224 U. S. 1, 56 L. Ed. 645, 32 Sup. Ct. Rep. 364, Ann. Cas. 1913D 880, held that "... the right to vend is exhausted by a single unconditional sale, the articles sold being thereby carried outside the monopoly of the patent law and rendered free of every restriction which the vendor may attempt to put upon it."

¹⁶ *Supra*, n. 3, p. 367.

¹⁷ United States v. Colgate & Co. (1918) 250 U. S. 300, 63 L. Ed. 992, 39 Sup. Ct. Rep. 465, 7 A. L. R. 443, note.

¹⁸ American Column and Lumber Co. v. United States (1921) 42 Sup. Ct. Rep. 114, U. S. Adv. Ops. 1922, p. 159. See comment in 10 California Law Review 350.

¹⁹ Federal Trade Commission v. Beech-Nut Packing Co. (1922) 42 Sup. Ct. Rep. 150, U. S. Adv. Ops. 1922, p. 178. The San Francisco Recorder, January 23, 1922. See comment in 10 California Law Review, 229.

²⁰ *Supra*, n. 4.

²¹ *Supra*, n. 3.

²² See criticism of the Clayton Act by minority of Committee on the Judiciary, 63d Cong., 2d session, House of Representatives, Report No. 627, Part 3, p. 2, Serial No. 6559, May 6, 1914: "Yet the seller may select his own customers, and may refuse to sell for any reason that he sees fit, including the fact that the proposing customer handles the products of some competitor. . . . This bill affords opportunities for doing secretly and in a roundabout way what it prohibits to be done above-board."